



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 579

September 29, 2022

ISSUE

Whether any of the State's revolving door provisions prohibit a former state employee from accepting certain employment. (AOR-670.)

SUMMARY

The requestor may accept the position. First, he is not a member of his agency's governing body nor is he the agency's executive head, so Section 572.054(a) does not apply. Second, as long as the position does not require him to work on any "particular matter" in which he participated as a state employee, Section 572.054(b) does not prohibit him from accepting the position. Finally, because he did not participate in any procurement or contract negotiation involving the potential employer during his state service, Section 572.069 does not prohibit him from accepting the position.

FACTS

The requestor is a state employee who is considering whether to accept a position in the private sector. In his current position, he has no working relationship with the potential employer. He does not review any contractual deliverables submitted by the potential employer to his state agency, nor does he exercise any judgment regarding the potential employer's performance or payment.

The requestor previously held a different position with the same state agency; however, in that capacity he "had no individual nor management responsibility for procurement of" the services provided by the potential employer. Nor was he involved in the selection or oversight of the potential employer.

ANALYSIS

The requestor is not subject to Section 572.054(a) of the Texas Government Code.

Section 572.054(a) of the Texas Government Code prohibits a "former member of the governing body or a former executive head of a regulatory agency" from making any communication to or appearance before an officer or employee of the agency in which the member or executive head

served for two years after leaving their position with the agency.” Tex. Gov’t Code § 572.054(a). The requestor is neither a member of the governing body nor an executive head of a regulatory agency. Therefore, Section 572.054(a) does not prohibit the requestor from accepting any potential employment.

Section 572.054(b) prohibits the requestor from working on certain “particular matters,” but does not prohibit the requestor from accepting employment.

Section 572.054(b) prohibits former state officers and employees of regulatory agencies from receiving any compensation for services rendered on behalf of any person “regarding a particular matter in which the former officer or employee participated during the period of state service or employment, either through personal involvement or because the case or proceeding was a matter within the officer’s or employee’s official responsibility.” Tex. Gov’t Code § 572.054(b). In short, this law prohibits a former state employee from working on a “matter” the former state employee “participated” in as an employee of the state agency. *Id.*

The Government Code defines “particular matter” as “a specific investigation, application, request for a ruling or determination, rulemaking proceeding, contract, claim, charge, accusation, arrest, or judicial or other proceeding.” *Id.* at § 572.054(h)(2). The Commission has previously opined that Section 572.054(b) does not prohibit former state employees from working in subject areas or for employers with which they became familiar in the course of their state employment. Tex. Ethics Comm’n Op. No. 364 (1997).

Here, the requestor has asked whether any of the state’s revolving door statutes prohibits him from “accepting a position with” a certain employer. Section 572.054(b) does not prohibit former state employees from accepting a position with any employer; it merely prohibits them from working on certain “particular matters.” Tex. Gov’t Code § 572.054(b). As long as the position does not require him to work on any particular matter in which he participated as a public servant, Section 572.054(b) does not prohibit him from accepting the position.

Because the requestor did not participate in a procurement or contract negotiation with the potential employer, Section 572.069 does not prohibit him from accepting the position.

The final revolving door provision, Section 572.069 of the Texas Government Code, prohibits former state officers and employees who “participated on behalf of a state agency in a procurement or contract negotiation involving a person” from accepting employment with that person for a certain period of time. Tex. Gov’t Code § 572.069.

Here, the requestor says that during his state service he “had no individual nor management responsibility for” the relevant procurement, the agency’s selection, or any oversight of the vendor’s performance. Taking these facts as true, we conclude that the requestor did not participate on behalf of a state agency in a procurement or contract negotiation involving the potential employer. Consequently, Section 572.069 does not prohibit him from accepting the position.